Supreme Court, U.S.
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IN THE

Supreme Court of The United States

October Term, 1994

Hyde Park Medical Laboratory, Inc., an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, The Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District - Fifth Division

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Illinois Prompt Payments Act requires that the State of Illinois pay interest on late payments for goods and services provided to the State, and that the Illinois Court of Claims "shall, in its investigation of payments due claimants, provide for the interest penalties as prescribed in the Act". The questions presented to this Court are whether Petitioner was deprived of property without due process in violation of the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States when:

A. The Illinois Court of Claims dismissed Petitioner's Complaint holding that its invoices were "not approved" without affording Petitioner an opportunity for an evidentiary hearing to show that the reason

asserted for dismissal was untrue;

B. The Illinois Circuit Court dismissed of Petitioner's Complaint for want of jurisdiction without conducting an evidentiary hearing or remanding the case to the Court of Claims for an evidentiary hearing;

C. The Illinois Appellate Court refused to remand the case for an evidentiary hearing, and instead affirmed the dismissal of Petitioner's Complaint without Petitioner having been afforded an evidentiary hearing;

D. The Illinois Supreme Court refused to grant review of the dismissal of Petitioner's Complaint without Petitioner having been afforded an opportunity for an evidentiary hearing; or,

E. The Illinois Department of Public Aid and Illinois Court of Claims illegally

failed to pay any and all bills in violation of the Illinois Prompt Payments Act forcing Petitioner to suffer substantial injury, damages, and losses, including loss of Petitioner's business, and the dismissal of Petitioner's Complaint without an evidentiary hearing sanctioned by Illinois Court of last resort present substantial Federal Constitutional questions and conflict with prior decisions of the Illinois Supreme Court and Illinois Appellate Courts, and with accepted and recognized principles established by this Supreme Court of the United States.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

HYDE PARK MEDICAL LABORATORY, INC.,
an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, the Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT-FIFTH DIVISION

The Petitioner, Hyde Park Medical Laboratory, Inc., an Illinois Corporation, respectfully petitions for a writ of certiorari to review the judgment of the

Appellate Court of Illinois, First District-Fifth Division, in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, First District-Fifth Division (App., 1-25) is reported at 259 Ill. App. 3d 889, 632 N.E. 2d 307 (1994). The order of the Supreme Court of Illinois denying the Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal (App., 27-28) is reported at 157 Ill. App. 3d 501 (1994). The orders of the Appellate Court of Illinois denying the Petition for Rehearing (App., 26), the order of the Supreme Court of Illinois denying the Motion for Leave to File Motion for Reconsideration (App., 29-30), the orders of the Circuit Court of Cook County, Illinois (App., 31-34), and the opinions and orders of the Illinois Court of Claims

(App., 35-52) are unreported.

JURISDICTION

The judgment of the Appellate Court of Illinois, First District-Fifth Division, was entered on March 31, 1994 (App., 1-25). The Court of Appeals denied a timely petition for rehearing on June 14, 1994 (App., 26). On October 6, 1994, the Supreme Court of Illinois denied the Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal (App., 27-28). On November 18, 1994, the Supreme Court of Illinois denied the Motion for Leave to File Motion for Reconsideration (App., 29). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment to the Constitution of United States:

Section 1. All persons born or

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, provides inter alia:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

CONSTITUTION OF THE STATE OF ILLINOIS

ARTICLE I
BILL OF RIGHTS

Section 2. Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of

the laws.

Section 12. Right to Remedy and Justice

Every person shall find a certain remedy in the laws for all injuries and groups which he receives on his person, privacy, property or reputation. He shall obtain justice by law, freely, completely and promptly.

Section 15. Right to Eminent Domain

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

ARTICLE VI
THE JUDICIARY

Section 4. Supreme Court - Jurisdiction

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

Section 6. Appellate Court - Jurisdiction

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall be

no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

Section 9. Circuit Courts - Jurisdiction

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

Illinois Revised Statutes (1976), ch. 127

PAYMENT FROM STATE FUNDS FOR GOODS OR SERVICES
(Emphasis Supplied)

AN ACT to require prompt payments by the State of Illinois for goods or services. Approved Dec. 19, 1975, (By P.A. 79-1182), eff. July 1, 1976.

132.401 Application of Act

Section 1. This Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General

Assembly, for goods or services furnished to the State.

132.402. Approval of bill -- Notice upon disapproval

Section 2. The appropriate State official or agency receiving the goods or services must approve or disapprove a bill from a vendor for goods or services furnished the State within 30 days after the receipt of such bill or within 30 days after the date on which goods or services were received, whichever is later. Written notice shall be mailed to the vendor immediately if a bill is disapproved.

132.403. Payment of bill -- Penalty for late payment

Section 3. Any bill approved for payment under Section 2 must be paid within 60 days of the date of approval. If payment is not made within this 60 day period an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof, after the end of the 90 day period, until final payment is made.

If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the penalty for late payment of that bill shall be computed from the date 90 days after the receipt of that bill or the date 90 days after the goods or services are received, whichever is later.

132.404. Examination of Voucher

Section 4. Neither Section 2 nor Section 3 shall be construed to deprive the Comptroller of his power to examine vouchers as specified in the Comptroller Act.

Illinois Revised Statutes (1988), ch. 127

PAYMENT FROM STATE FUNDS FOR GOODS OR SERVICES
(Emphasis supplied)

AN ACT to require prompt payments by the State of Illinois for goods or services, P.A. 79-1182, approved Dec. 19, 1975, eff. July 1, 1976.

132.401 Application of Act

Section 1. This Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State. Except as provided in Section 2.1, for purposes of this Act, "goods or services furnished to the State" include but are not limited to medical assistance provided to public aid recipients and reimbursed from State funds under Articles V, VI and VII of The Illinois Public Aid Code.

For the purposes of this Act, "appropriate State official or agency" is defined as the Director or Chief Executive of his designee of that State agency or department or facility of such agency or

department.

Amended by P.A. 85-1159, Sec. 2-5, eff. August 4, 1988.

132.402. Approval of bill or invoice -- Notice upon disapproval

Section 2. The appropriate State official or agency receiving the goods or services must, except as provided in Section 2.1, approve or disapprove a bill or invoice from a vendor for goods or services furnished the State within 30 days after the receipt of such bill or invoice, within 30 days after the date on which the goods or services were received by the agency, within 30 days after the date specified in any lease provision, or within 30 days after the date specified on which the appropriation from which the payment is to be made becomes law, whichever is later. Written notice shall be mailed to the vendor immediately after receipt of such goods or services if a bill or invoice for such goods or services is disapproved for any reason.

Amended by P.A. 85-1159, Sec. 2-5, eff. Aug. 4, 1988.

132.403. Payment of bill -- Penalty for late payment

Section 3. Any bill approved for payment under Section 2 must be paid or the payment mailed to the payee within 30 days of the date of approval, except in the case of bills approved for payment from the Office Supply Revolving Fund, the Paper and

Printing Revolving Fund, the Statistical Services Revolving Fund, the Communication Revolving Fund, and the State Garage Revolving Fund in which case the bill must be paid or the payment mailed to the payee within 60 days of the date of approval. If payment is not made or mailed to the payee within this 30 day period or 60 day period, whichever is applicable, an interest penalty of 2% of any amount approved and unpaid shall be added for each month or fraction thereof, after the end of this 30 or 60 day period, whichever is applicable until final payment is made.

If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the penalty for late payment of that bill shall be computed from the date 45 days after the receipt of that bill or the date 45 days after the goods or services are received whichever is later.

Amended by P.A. 83-932, Sec. 2, eff. Nov. 2, 1983; P.A. 83-1341, Sec. 2, eff. Sept. 7, 1984.

132.403-1. Interest penalty

Section 3-1. In any instance where a State official or agency is late in payment of a Vendor's bill or invoice properly approved in accordance with the Act, and different late payment terms are not reduced to writing as a contractual agreement, the State official or agency shall pay the interest penalty required by this Act to the appropriate vendor.

However, the vendor must initiate a written request for the interest penalty when such interest is due and payable. The request shall include a description of the original transaction, including invoice date, invoice amount and the date the bill was presented to the official or agency. Such interest shall be paid by separate warrant from the same appropriation line item as that from which the principal is paid.

The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act.

Added by P.A. 85-348, Sec. 1, eff. Jan. 1, 1988.

132.404. Examination of vouchers

Section 4. Neither Section 2 nor Section 3 shall be construed to deprive the Comptroller of his power to examine vouchers as specified in the Comptroller Act.

132.405. Interest-Invoice or voucher

Section 5. The State invoice or voucher shall indicate that payment of interest may be available for failure to comply with this Act.

Added by P.A. 85-159, Section 2-5, eff. Aug. 4, 1988.

132.406. Vendor's waiver of penalty for late payment

Section 6. A State official or agency may not request any vendor to waive his rights, under this Act, to recover a penalty for late payment as a condition of, or inducement to enter into, any contract for goods or services.

Added by P.A. 85-1159, Section 2-5, eff. Aug. 4, 1988.

STATEMENT OF THE CASE

This is a petition for a writ of certiorari from the dismissal of Petitioner's Complaint by the Illinois Court of Claims, finding that the invoices were "not approved" without an evidentiary hearing and denying Petitioner's request for an evidentiary hearing to prove that the court finding upon which the complaint was dismissed was untrue, that all invoices or bills were in fact approved, and that under the Illinois Prompt Payments Act failure to approve or disapprove a bill or invoice would still entitle a claimant to the interest penalty, in the case of Hyde

Park Medical Laboratory Inc., v. State of Illinois and the Illinois Department of Public Aid, No. 89 CC 3041, (App. 45-52); (2) from the dismissal of Complaint for Declaratory Judgment and Writ of Mandamus and/or Certiorari to compel Respondent Illinois Court of Claims to fulfill its statutory obligations under the Prompt Payments Act and/or to afford Petitioner an evidentiary hearing, by the Circuit Court of Cook County, Illinois for want of jurisdiction without affording Petitioner an evidentiary hearing and without remanding the case for an evidentiary hearing, in case No. 91 CH 2302, (App. 31-34); (3) from the decision and judgment of Appellate Court of Illinois affirming the Circuit Court in its dismissal of Petitioner's Complaint without a evidentiary hearing for want of

jurisdiction and refusal to remand the case for evidentiary hearing, in appeal No. 1-91-3886, (App. 1-26); and (4) from the denial by Supreme Court of Illinois of Petitioner's Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal, and denial of its subsequent Motion for Leave to File Motion for Reconsideration, in appeal No. 77554 (App. 27-30).

On August 22, 1988, the Respondent Illinois Court of Claims, in the case of Hyde Park Medical Laboratory, Inc., an Illinois Corporation v. State of Illinois, Court of Claims No. 6779, filed in June, 1972, issued an Opinion wherein it was "ordered, adjudged and decreed" that the Petitioner herein be awarded the amount of $340,681.00 for medical laboratory services rendered to the Respondent Illinois

Department of Public Aid from December 31, 1969 through May 31, 1971 (App., 35-40). The aforesaid Opinion and Award did not include any pre-award interest, despite the prayer therefore in the complaint and repeated motions by Petitioner requesting such relief, including Petitioner's Motion for Rehearing, Reconsideration, and Modification which Motion was denied by Order of November 7, 1988 (App., 41-44).

On March 28, 1989, Petitioner filed a second complaint in the Court of Claims, Court of Claims No. 89 CC 3041, as a separate and distinct claim for the interest due and owing mandated by statute, citing, inter alia: The Illinois Prompt Payments Act, Ill. Rev. Stats., ch. 127, pars. 132.401, 132.402, 132.403 and 132.403-1, which from its initial enactment in 1976 expressly provided for interest on

late payments for goods and services provided to the State of Illinois (supra at 5-7), and, effective January 1, 1988, mandated that (supra at 10):

> "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act."

The Petitioner also relied upon Article I, Sections 2, 12, and 15 of the Illinois Constitution, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; and the opinions of the Supreme Court of Illinois in City of Springfield v. Allphin, 82 Ill.2d 571, 580 (1980), and In Re Special Education of Steven Walker v. Cronin, 131 Ill.2d 300 (1989).

On December 7, 1990, Respondent Illinois Court of Claims entered an Opinion dismissing the aforesaid complaint holding

that the State's Prompt Payments Act did not apply to Petitioner because Petitioner's claims were not "properly approved" by the Department of Public Aid (App., 45-49). Petitioner filed a Motion for Rehearing, Reconsideration, Modification, Grant of Summary Judgment and Entry of Award Prayed for in the Complaint with respect to the December 7, 1990, opinion, requesting, inter alia, an evidentiary hearing with respect to certain purported "findings" upon which Illinois Court of Claims based its December 7, 1990, opinion, which Motion for Rehearing, etc., was denied by the Court of Claims on June 12, 1991 (App., 50).

Accompanying the aforesaid order denying the Motion for Rehearing, etc., was a letter advising Petitioner "If you disagree with this decision, you are

entitled to a hearing or review, provided you submit a written request within thirty days...". Accordingly, on July 9, 1991, Petitioner filed a Request for Evidentiary Hearing with the Court of Claims requesting the opportunity to prove that the claims submitted by Petitioner to Respondent Department of Public Aid were properly approved and/or not disapproved and, in the alternative, that the Court of Claims, by its Opinion and Award of August 22, 1988, had determined that the Department of Public Aid's failure to make payment of Petitioner's claims was illegal, and therefore, Petitioner should be awarded interest and/or interest penalty. On September 6, 1991, the Court of Claims denied Petitioner's Request for an Evidentiary Hearing (App., 51-52).

On March 13, 1991, Petitioner filed in

the Circuit Court of Cook County, Illinois, a Complaint or Declaratory Judgment, Mandamus and Other Relief, requesting a declaratory judgment and the issuance of a writ of mandamus and/or certiorari to declare, compel, and command the Respondents to their statutory and/or constitutional duties and obligations to Petitioner under the Illinois Prompt Payments legislation, and the Illinois and United States Constitutions, Hyde Park Medical Laboratory, Inc. v. Court of Claims of the State of Illinois, the Illinois Department of Public Aid, and Philip Bradley, in his official capacity as Director of the Illinois Department of Public Aid, No. 91 CH 02302 (Excerpts in App., 59-60). On May 6, 1991, Respondents filed their Motion to Dismiss; Petitioner filed memoranda in Response (Excerpts in

App., 61-63). On September 9, 1991, the Circuit Court granted the Respondents' Motion to Dismiss for "lack of jurisdiction" (App., 31-32).

On October 9, 1991, Petitioner filed a Motion for Reconsideration (Excerpts in App., 64-65). The Circuit Court denied Petitioner's Motion for Reconsideration on November 12, 1991 (App., 33-34). On December 10, 1991, Petitioner filed a Timely Notice of Appeal, and an Amended Notice of Appeal on December 12, 1991.

On March 31, 1994, the Appellate Court of Illinois, First District - Fifth Division, Case No. 1-91-3886, entered its Opinion affirming the judgment of the Circuit Court of Cook County, Illinois (App., 1-25), stating, inter alia, and contrary to the record (App., 24-25):

> Plaintiff contends that it should have been granted an

> additional hearing specifically on the issue of whether its invoices were "approved." Plaintiff argues that it should have had the opportunity to prove that the invoices were approved. We find no due process violation in the court of claims refusal to grant an additional hearing. It is clear from the court of claims' opinion that it considered the very issue on which plaintiff seeks to be heard; the court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

See Excerpts from Petitioner's Brief and Petition for Rehearing filed in the Appellate Court of Illinois (App., 66-80).

On June 14, 1994, the Appellate Court of Illinois denied the Petition for Rehearing (App., 26).

On October 6, 1994, the Supreme Court

of Illinois denied the Petition for Appeal as a Matter of Right, Or, In The Alternative, For Leave To Appeal (App., 27-28)[See Excerpts from said Petition for Appeal, and Petitioner's Motion for Reconsideration that Petitioner moved for leave to file (App., 81-105)]. On November 18, 1994, the Supreme Court denied Petitioner's Motion for Leave to File Motion for Reconsideration (App., 29).

As established by the aforesaid opinions and orders and the excerpts from the briefs and motions submitted to the Circuit Court of Cook County, Illinois, the Appellate Court of Illinois and the Supreme Court of Illinois (App., 59, et seq.), the federal questions sought to be reviewed were timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

I. LEAVE TO APPEAL SHOULD BE GRANTED BY REASON OF THE GENERAL IMPORTANCE OF THE QUESTIONS PRESENTED BY THE ERRONEOUS DECISION

This Petition for Writ of Certiorari is of general importance because this Court's decision will determine whether all vendors to the State of Illinois will be denied of their property and rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States in clear conflict with applicable decisions of this Court. The case involves thousands of vendors and millions of dollars that those vendors have been unlawfully and unjustly deprived, wrongfully causing substantially injury, damage and loss.

Review by certiorari is appropriate in the case at bar under Rule 10(1) (b) and/or

(c) of the Rules of this Supreme Court of the United States by reason that this case presents substantial Federal questions that should be settled by this Court, in that the dismissal of the Complaint herein on the basis that Petitioner's invoices were "not approved" without affording Petitioner the opportunity for a evidentiary hearing to show that the dismissal of the Complaint was erroneous because all of the invoices were in fact approved, and further denying a subsequent Petition for a evidentiary hearing to prove that the Court findings were untrue and not supported by facts or evidence, and thus, condemning Petitioner to suffer grevious injury and loss, by the deprivation of rights and property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of

the United States, and creating the conflict between the accepted and recognized principles established by this Court in Goldberg v. Kelly, 397 U.S. 254, 270 (1970), wherein this Court held that: "... where governmental action seriously injures an individual and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue." See also Armstrong v. Manzo, 380 U.S. 543, 552 (1965).

This Court's opinion will assure that these vendors and claimants before the Illinois Court of Claims Circuit Court, Appellate Court, and Supreme Court are no longer deprived of their procedural due process rights and property under the Due

Process Clause of the Fourteenth Amendment to the Constitution of the United States by requiring a due process hearing before denying interest penalties under the Illinois Prompt Payments Act.

In addition, this Court's opinion will also assure that Illinois courts do not abdicate their constitutional and judicial responsibility to interpret and apply the clear and unequivocal laws of the State of Illinois, and by such refusal or failure vitiate those laws, and thereby deprive the citizens of the State of Illinois of their property without due process of law.

The express and unequivocal provisions of the Prompt Payments Act will be complied with by the Court of Claims in rendering awards for all claims for thousands of vendors doing millions of dollars of business with the State of Illinois, i.e.,

whether "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." The case will also determine whether the Court of Claims can avoid this unambiguous statutory mandate by ignoring both that obligation and its other statutory obligation to award such interest if the State official or agency fails to approve or disapprove of the bill for goods or services within the time limitations set forth in the Act, or is found to have improperly failed to approve or wrongfully disapproved, or can refuse to award interest on those bills it finds that the State official or agency has not "properly" approved without affording the vendors an opportunity for an evidentiary hearing to dispute those "findings".

Since 1976, the Illinois General Assembly has attempted to provide protection and a remedy to the vendors of the State as an incentive to provide goods and services without the concern that they may not get paid for a considerable period of time. As is manifested by this case, the Court of Claims has been recalcitrant, obdurate, and incorrigible with respect to its statutory obligations. This Court's decision will be significant to all vendors of the State of Illinois, will require the Illinois Court of Claims and Illinois courts to compel compliance with the statutorily mandated interest penalties for late payment of their bills and invoices justly due and owing, and will influence their willingness to provide goods and services to the State of Illinois.

This Court's opinion will also involve

substantial sums of money that the vendors providing goods and services to the State of Illinois have been unconstitutionally deprived of, all in violation of their equal protection and due process rights under the Fourteenth Amendment to the Constitution of the United States.

II. THE DECISIONS SOUGHT TO BE REVIEWED ARE CLEARLY ERRONEOUS

This argument presents the precise issues to be resolved in five parts, which, when considered conjunctively, demonstrate clearly that Writ of Certiorari should be granted in cases involving principles the settlement of which is of importance to the Public, and, in cases where a state court has decides a federal question in a way that conflicts with applicable decisions of this court.

The Illinois Prompt Payments Act

expressly requires that the State of Illinois pay interest on late payments for goods and services provided to the State, and that the Illinois Court of Claims "shall, in its investigation of payments due claimants, provide for the interest penalties as prescribed in the Act."

A. THE DISMISSAL BY THE ILLINOIS COURT OF CLAIMS OF PETITIONER'S COMPLAINT HOLDING THAT THE INVOICES WERE "NOT APPROVED" WITHOUT AFFORDING PETITIONER AN OPPORTUNITY FOR AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSAL WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Contrary to the aforesaid "finding", Petitioner was <u>never</u> afforded an evidentiary hearing by or before the Illinois Court of Claims on the issue of whether its invoices were "approved" (even though under the statute the <u>failure</u> to approve or disapprove the invoices results

in entitlement to the interest penalty). The record is devoid of any evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. The only hearing was the hearing whereat Petitioner proved 100% of its claims, without any opposing evidence, not a hearing with respect to the issue of approval. The record does support a factual determination that Petitioner requested an evidentiary hearing on the issue of approval. The Petitioner contended that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Petitioner received no evidentiary

hearing. It was impossible for the Respondent Court of Claims, or for the Appellate Court to conclude, upon this record that "approval was lacking and no additional evidence from Petitioner could prove otherwise" (App., 1-26). Petitioner most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, [Armstrong v. Manzo, 380 U.S. 543, 552 (1965); Goldberg v. Kelly 397 U.S. 254, 270 (1970); and Boddie v. Connecticut, 401 U.S. 371, 377 (1971)].

In addition, the Petitioner respectfully submits that the entire issue of approval was an artifice created by the Respondent Court of Claims to avoid the mandate of the Illinois Legislature. More particularly, the Prompt Payments Act has at all times required payment of the

interest penalty irrespective of whether the bills or invoices have been "approved" (1976), or "properly approved in accordance with this Act" (1988), or whenever the State official or agency "fails to approve or disapprove" that bill within the thirty (30) day period provided for approval under Section 2 of every Act since the inception of the law.

Determinatively, the record is completely devoid of any "disapproval" of the Petitioner's invoices. The Petitioner was only informed that its invoices were being held "pending investigation". The Department never informed Petitioner that its invoices were disapproved, it simply failed to pay the bills. Following this failure [not a "refusal" as indicated by the Appellate Court Opinion, (App., 1-26)], the Petitioner filed its claim. In

rendering its opinion, the Respondent Court of Claims deceptively stated (Opinion, December 7, 1990, (App., 47-48.): "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:

> "In any instance where a State official or agency is late in payment of a vendor's bill or invoice <u>properly approved</u> in accordance with this Act ... the State official or agency shall pay the interest penalty... emphasis supplied."

The Court of Claims intentionally ignored the operative statutory language, and thus the issue.

Second, Petitioner respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Respondent Court of Claims' "reasoning", result in no interest being received by the

aggrieved vendor. Apparently, it is only where the State officials (rightly or wrongly) affirmatively acknowledge the indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Third, as is noted in the Court of Claims' Opinion, Petitioner sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved. However, Petitioner never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims refusal to award interest was untrue. The Respondent Court of Claims' interpretation of the Illinois Prompt Payments Act had the effect of precluding

Petitioner from obtaining statutorily mandated interest on the wrongfully and illegally withheld payments required in the Illinois Public Aid Code, Ill.Rev.Stat. ch. 23, Section 12-4.25 (F) (App., 53) (1977), where Respondents were required to pay all bills submitted within 120 days of the initiation of the type of proceeding which the laws of the State of Illinois required Respondents to conduct in order to withhold payments. Respondents failed to pay Petitioner within 120 days of December 1, 1977, without the statutory authority to do so. Further, prior to the aforesaid statute, the Supreme Court of Illinois in Bio-Medical Laboratories, Inc. v. Trainor 68 Ill.2d 540, 548, (1977) held that suspension of participation, and thus withholding payments, was without statutory authority.

Since an evidentiary hearing was never held on whether Petitioner's claims were "approved" or "properly approved" by the Department of Public Aid despite Petitioner's repeated requests for such a hearing to show that the bills and invoices were in fact approved, the dismissal of Petitioner's Complaint deprived Petitioner of rights and Property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

B. THE DISMISSAL BY THE ILLINOIS CIRCUIT COURT OF PETITIONER'S COMPLAINT FOR WANT OF JURISDICTION WITHOUT AFFORDING PETITIONER AN OPPORTUNITY FOR A EVIDENTIARY HEARING OR REMANDING THE CASE TO THE COURT OF CLAIMS FOR A EVIDENTIARY HEARING WHEREIN PETITIONER COULD SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Contrary to the opinion of the Illinois Circuit Court in dismissing of Petitioner's Complaint for want of jurisdiction, Petitioner contends that the Circuit Court did have jurisdiction and that the dismissal of the Complaint deprived Petitioner of rights and property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. Petitioner's Complaint sought declaratory judgment, a writ of mandamus, and/or common law writ of certiorari, and relief under the Illinois Constitution 1970, Art. VI, Secs. 4, 6, and 9 and the Fourteenth Amendment to the Constitution of the United States. These are appropriate and legally authorized causes of action to compel respondents to comply with their statutory

responsibilities and obligations. In Re Special Education of Steven Walker, 131 Ill.2d 300, 306, (1989); City of Springfield v. Allphin, 82 Ill.2d 571, 578, (1980); Bio-Medical Laboratories v. Trainor, 68 Ill.2d 540, 548 (1977); League of Women Voters of Peoria v. The County of Peoria, 121 Ill.2d 236, 243, (1988); Rossetti Constructing Co. v. Court of Claims, 109 Ill.2d 72, 78, 80, (1985). More particularly, in City of Springfield v. Allphin, 82 Ill.2d at 571, the Illinois Supreme Court specifically stated that "...(W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., ch. 127, par. 132.403)", (1976) specifically referring to the very statute relied upon by Petitioner herein. Cf. In

Re Special Education of Steven Walker, supra, 131 Ill.2d at 306 and Illinois State Board of Dental Examiners v. People ex rel. Cooper, 123 Ill. 227, (1887).

Significantly, the Illinois Prompt Payments Act expressly provided for the contingency of a failure, refusal, or neglect to approve or disapprove a bill. Under such circumstances, the original Act provided (Ill. Rev. Stats., ch. 127, par. 132.403), (1976):

> If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the (interest) penalty (of 1% for each month or fraction thereof) for late payment of that bill shall be computed from the date 90 days after receipt of that bill or the date 90 days after the goods or services are received, whichever is later.

The interest percentage increased and days for computation decreased as the Illinois General Assembly became increasingly more

frustrated with the State's failure to pay its obligations, until the present 2% and 45 day computation.

In further frustration (as is evident from the legislative history) with the State of Illinois and the Court of Claims, the General Assembly mandated the Court of Claims to perform its statutory duty by adding the following to Section 3-1 (P.A. 85-348; effective January 1, 1988; emphasis added):

> **The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act.**

Determinatively, under the Act, bills do not have to be approved for the interest penalty apply, i.e., the mere failure to approve these bills is sufficient for the imposition of the interest penalty. Moreover, Petitioner respectfully submits

that the amendment should have been construed in a manner consistent with the legislative intent of both the Act and amendment--to effect prompt payment of all the State's obligations. See generally, Bilek v. Board of Education of Berkeley School District No. 87, 61 Ill.App.3d 323 (1978). However, even if both bills and invoices must be "properly approved in accordance with this Act," the failure to approve or disapprove a bill "whose approval is required", should be construed as being "approved in accordance with this Act". Otherwise, legitimate and justly due and owing bills, such as those of the Petitioner, that are neither expressly approved or disapproved, will not receive the interest penalty for late payment. This would not only be illogical -- refusing to pay interest to vendors whose

justly due and owing bills are wrongfully not paid (or even if disapproved), or not acted upon, but in direct contravention and derogation of the purposes of both the Act and amendments. It would also constitute and effect a manifest injustice.

The Respondent Illinois Court of Claims should have awarded the interest "as prescribed in this Act." The Court of Claims not only disregarded the law, they disregarded the law mandating that they follow the law. This Court is respectfully referred to the language of the Illinois Supreme Court in Dozoretz v. Frost, 145 Ill.2d 325, (1991):

> "A court may not read a limitation into a statute which the legislature has not seen fit to enact nor may it, by subtle construction, alter the plain meaning of the words employed." (People v. Larson, 132 Ill.App.3d 594, 596, (1985)). In this case the meaning of the statutory text is clear and unambiguous."

The legislation involved in the present case imposed no new obligation, nor even any new procedure or remedy. The express obligation to pay interest, the procedure, and remedy have existed since the enactment of the Prompt Payments Act in 1976. The statutory obligation of the State to promptly pay its bills for goods and services existed long prior to Petitioner's services. The legislative history and a fair reading of the statute reveal that the 1988 amendment was a directive by the General Assembly to the State mandating that it comply with its prior obligations, and, upon the failure of the State to effect payment, that the Court of Claims "shall" award the required remedy. The use of the word "shall" is generally regarded as being mandatory. Henderson v. Hudson, 121 Ill.App.3d 780,

785 (1984). The State courts should have enforced those unequivocal mandates.

Petitioner most respectfully submits that the dismissal of the instant Complaint by the Circuit Court for want of jurisdiction contrary to the most fundamental concept of due process, and clearly contrary to this Court's holdings in Armstrong v. Manzo, 380 U.S. 543, 552, (1965); Goldberg v. Kelly, 397 U.S. 254, 270, (1970); and Boddie v. Connecticut, 401 U.S. 371, (1971),

C. **THE REFUSAL BY THE ILLINOIS APPELLATE COURT TO REMAND THE CASE FOR EVIDENTIARY HEARING, AND AFFIRMANCE OF THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT PETITIONER HAVING BEEN AFFORDED AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.**

On appeal the Illinois Appellate Court affirmed the dismissal of Petitioner's Complaint by the Illinois Court of Claims holding that Petitioner's invoices were "not approved" without affording Petitioner the opportunity to show that the invoices were approved and that the basis for dismissing the Complaint was not true (App., 45-52).

The Illinois Appellate Court also affirmed the dismissal by the Illinois Circuit Court of Petitioner's Complaint for declaratory judgment and/or writ of mandamus and/or writ of certiorari, for want of jurisdiction, instead of conducting an evidentiary hearing or remanding the case for a evidentiary hearing on the issue of whether the invoices were approved and for other relief (App., 31-34). The Illinois Appellate Court deprived

Petitioner of rights and Property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution to the United States.

Contrary to the "finding" of the Appellate Court, the principles governing entitlement to declaratory judgment are well established under Section 2-701 of the Illinois Code of Civil Procedure (Declaratory Judgment), Ill. Rev. Stats., ch. 110, par. 2-701 (App., 54). Office of the Lake County State's Attorney v. Illinois Human Rights Commission, 200 Ill.App.3d 151, 558 N.E. 2d 668, 671, (1990). Stone v. Omnicom Cable Television of Illinois, Inc., 131 Ill.App.3d 210, 475 N.E.2d 223, 227, (1985); Kerr Steamship Company, et al. v. Chicago Title & Trust Co., 120 Ill.App.3d 998,

1003, (1983); Safeco Insurance Company v. Brimie 163 Ill.App.3d 200, 516 N.E.2d 577, 579, (1987); and Greene v. Gust, 26 Ill. App.2d 2, 5-6, (1960).

Therefore, the Circuit Court had jurisdiction to determine the respective rights of the parties on the merits and enter declaratory judgment accordingly.

Moreover, it is equally well settled that "The purpose of the writ of certiorari is in all cases to prevent injustice." People ex rel. Fosse v. Allman, 329 Ill.App. 296, 299, (1946). "[A writ of certiorari] is awarded when inferior tribunals are shown to have exceeded their jurisdiction, or in cases where they have proceeded illegally and no appeal is allowed and no other mode of directly reviewing their proceedings is provided." Id. at 299. The Illinois Supreme Court has

held that a decision by the Court of Claims is subject to review by means of an extraordinary writ filed in the circuit court. See Rossetti Contracting Company, Inc. v. Court of Claims, 109 Ill.2d 71, 79, 485 N.E.2d 332, 334-35, (1985). And yet the Illinois Supreme Court refused to review the Petitioner's Complaint. Similarly, "[c]ircuit courts have original jurisdiction in mandamus proceedings, "People ex rel. Baird v. Lindheimer, 370 Ill. 424, 427, (1939). Writs of mandamus are directed to inferior courts by a superior court. People ex rel Filkin v. Flessner, 48 Ill.2d 54, 56, 268 N.E.2d 376, 378, (1971). Ill. Rev. Stats., ch 110, par. 14-101, et seq.(App. 56-58); and, Illinois Constitution, Art. VI, Sections 4, 6 and 9. As declared in Rossetti Contracting Company Inc. v. Court of

Claims, 109 Ill.2d 72, 78, 485 N.E.2d 332, 334, (1985), the Court of Claims is an inferior court in that it is not a court within the meaning of Article VI of the Illinois Constitution 1970, but instead a fact-finding body. See also People ex rel. Harrod v. Illinois Courts Commission, 69 Ill.2d 445, 461-62, 372 N.E.2d 53, 60, (1977). Furthermore, a decision by the Court of Claims is subject to review by means of an extraordinary writ filed in a circuit court. Rossetti, 109 Ill.2d at 79, 485 N.E. 2d at 334-35. Accordingly, in the instant case, the Circuit Court clearly had jurisdiction to enter declaratory judgment and/or issue either a writ of mandamus or certiorari against the Respondents Illinois Court of Claims, Illinois Department of Public Aid, and its Director in his official capacity.

Moreover, although the issuance of writs of certiorari and mandamus are at the discretion of a circuit court [See People ex rel. Fosse v. Allman, 329 Ill.App. 296, 299 (certiorari), (1946); Orenic v. Illinois State Labor Relations Board, 127 Ill.2d 453, 467, 537 N.E.2d 784, 791, (1989), (mandamus), a court abuses its discretion when it does not exercise said discretion, and such an abuse of discretion calls for a remand. Mizell v. Passo, 192 Ill.App. 3d 435, 441, 548 N.E.2d 783, 787, (1989), cert. denied, 142 Ill.2d 663 (1990). In the instant case, the Circuit Court dismissed Plaintiff's Complaint because it did "not feel [it had] the authority to adjudicate", finding as a matter of law that it did not have jurisdiction (App., 31-34). Since the Circuit Court's refusal to exercise its

discretion was based solely upon its erroneous belief that it lacked jurisdiction, the Circuit Court abused its discretion.

Accordingly, the Appellate Court of Illinois should have reversed the dismissal for want of jurisdiction and directed the Circuit Court to enter a declaratory judgment, and/or cause to be issued a writ of mandamus and/or certiorari compelling the Respondents to perform their constitutional and statutory obligations, or reverse and remand the case for a decision of the merits.

D. THE REFUSAL BY THE ILLINOIS SUPREME COURT TO GRANT REVIEW OF THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT PETITIONER HAVING BEEN AFFORDED AN OPPORTUNITY FOR AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In this case, the Illinois Court of Claims, Circuit Court, Appellate Court and Supreme Court have completely ignored the most fundamental conceptS of due process established by this Court in Armstrong v. Manzo, 380 U.S. 543, 552, (1965); Goldberg v. Kelly, 397 U.S. 254, 270, (1970); Boddie v. Connecticut, 401 U.S. 371, 377, (1971); have acted directly contrary to the principles established by this Court and have deprived Petitioner of rights and property without due process, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution to the United States.

Contrary to the "finding" of the Illinois Appellate Court from which the Illinois Supreme Court refused to grant review, and as is manifest from the pleadings and briefs, Petitioner has never

sought a judgment of monetary damages in the court proceedings. To the contrary, petitioner has at all times only sought a declaration of its and all other vendors' rights, and/or issuance of a writ of mandamus and/or certiorari compelling the Respondents' compliance with clear and unequivocal statutory mandates contained in the language and in conformity with the legislative history of the Prompt Payments Act.

The Illinois Appellate Court held, inter alia (App., 1-26):

> Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against the plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim...
>
> * * *

> Clearly, the circuit court had not jurisdiction to make an independent determination of the parties rights' under the Prompt Payment Act.
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> * * *
>
> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim.
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> * * *
>
> As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

Plaintiff most respectfully submits that a suit for declaratory judgment, that a writ of mandamus and/or certiorari to review and correct "an erroneous construction of a statute is not a suit against the State ...", even if the result is "to compel the director of the state

department and other similar officials to perform their duty to pay plaintiff...". People ex rel. Hilger v. Myers, 114 Ill.App.2d 478 482, (1969), citing People ex rel. Freeman v. Department of Public Welfare, 368 Ill. 505, 507, (1938). See also, Bio-Medical Laboratories v. Trainor 68 Ill.2d 540, (1977).

In this case, the Court of Claims, Circuit Court, and then the Appellate Court and Supreme Court of Illinois have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration of the Illinois Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of the Supreme Court of

Illinois, citing this very law as the paradigmatic example of a legislative intent to impose interest liability on the State. More particularly, in City of Springfield v. Allphin, 82 Ill.2d at 571 (1980), the Supreme Court of Illinois specifically stated that "... (W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., ch. 127, par. 132.403, (1976))", specifically referring to the very statute relied upon by Petitioner herein. Yet the very same Illinois Supreme Court refused to review the erroneous Illinois Appellate Court findings, contradicting itself and conflicting with its own findings and as a result deprived Petitioner of rights and property without due process in violation

of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the same Supreme Court determinatively stated:

> Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat., ch. 127, par. 132.403, (1977)) as an example of an act which sufficiently manifested the legislature's intent to waive sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act

> applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat., ch. 127, par. 132.401, (1977).)

Under such "clear and affirmative statutory language", the Circuit Court, Appellate Court and Supreme Court of Illinois were under a duty to apply the law as legislated, written, construed and previously interpreted by the Supreme Court of Illinois. People ex rel. Harrod v. Illinois Courts Commission, supra, 69 Ill.2d at 472-473, and Rossetti Contracting Co. v. Court of Claims, supra, 109 Ill. 2d at 78-80.

In the State court appeal, this Petitioner sought an interpretation and application of the applicable law by a court of competent jurisdiction. The Illinois Supreme Court should not have

abdicated its judicial responsibility and duty to allow the Court of Claims to read and apply limitations into the statute contrary to its express and unequivocal language, its clear legislative history, and as (twice) interpreted by the Illinois Supreme Court. Accordingly, it was the Illinois Supreme Court and not the Court of Claims that should have made the determination of whether the dismissal of Petitioner's Complaint without a evidentiary hearing denied Petitioner of due process in violation of the Due Process and Equal Protection Clauses of the Fourteen Amendment to the Constitution of the United States, and the determination with respect to entitlement and retroactivity.

E. **THE ILLEGAL FAILURE OF THE ILLINOIS DEPARTMENT OR PUBLIC AID AND ILLINOIS COURT OF CLAIMS TO PAY ANY AND ALL PETITIONER'S BILLS IN VIOLATION OF THE**

PROMPT PAYMENTS ACT FORCING PETITIONER TO SUFFER SUBSTANTIAL INJURY, DAMAGES, AND LOSS, INCLUDING LOSS OF BUSINESS, AND THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT EVIDENTIARY HEARING SANCTIONED BY ILLINOIS COURT OF LAST RESORT PRESENT SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTIONS AND CONFLICT WITH DECISIONS OF THE ILLINOIS SUPREME COURT AND OTHER ILLINOIS APPELLATE COURTS AND WITH ACCEPTED AND RECOGNIZED PRINCIPLES ESTABLISHED BY THIS SUPREME COURT OF THE UNITED STATES.

The failure of Respondent Illinois Department of Public Aid to pay any and all of the bills and invoices from 1969 until August 22, 1988, despite Petitioner's exhaustion of administrative, legal, and equitable efforts violated the provisions the Illinois Prompt PaymentS Act (Ill. Rev. Stat. (1976-1988) ch. 127, par. 132. 401 - 132. 402 - 132. 403 and 132.403-1, (1976-1988) inclusive); and the Illinois Public Aid Code, Ill.Rev.Stat. ch. 23 12-4.25 (F) (App., 53), (1977), which required the payment of all bills submitted within 120

days of the initiation of the type of proceeding which the laws of the State of Illinois required Respondent to conduct in order to withhold payments. Respondent failed to pay Petitioner within 120 days of December 1, 1977, without the statutory authority to do so. Further, the authority contained in 12-4.25 and the limitations placed upon such authority are retroactively applicable to the facts and circumstances contained in this Section 12-4.26. In addition, the Illinois Supreme Court found such failure to pay bills and invoices illegal in Bio-Medical Laboratories Inc., v. Trainor, 68 Ill.2d 540, (1977).

Respondents' illegal failure to pay any and all bills and invoices caused Petitioner to suffer substantial injury, damages and loss, including loss of its

entire business by being forced out of business by reason of illegal failure to pay the sums justly due and owing thereto for services rendered to the State of Illinois, and then the unsuccessful years consumed in the continuing exhaustion of administrative, legal, and equitable efforts to receive payment required before seeking final determination of the Claim in the Court of Claims:

> "Section 790.60 Exhausting of Remedies. As required by Sec. 25 of the Court of Claims Act (Ill.Rev.Stat. 1979, ch. 37, par. 439.24-5), the claimant shall before seeking final determination of his claim before the Court of Claims exhaust all other remedies, whether administrative, legal or equitable."

Because Petitioner did not receive the interest remedy prayed for in its Complaint, a separate and distinct Complaint was filed to obtain the interest penalty, and as shown herein, the Illinois

Court of Claims dismissed the Complaint holding that the invoices were "not approved" without affording a evidentiary hearing, the Circuit Court dismissed Petitioner Complaint for declaratory judgment, etc., for want of jurisdiction without a evidentiary hearing, the Illinois Appellate Court affirmed (App., 1-26), and the Illinois Supreme Court sanctioned such dismissal without evidentiary hearing by refusing to grant review. Petitioner respectfully contends that the Illinois Court of last resort's actions present substantial Federal Constitutional questions and conflict with decisions of the same Supreme Court other Illinois courts, as shown herein, and with accepted and established judicial principles recognized by this Supreme Court of the United States in Armstrong v. Manzo, 380

U.S. 543, 552 (1965); Boddie v. Connecticut 401 U.S. 371, 377 (1971); and Goldberg v. Kelly, 397 U.S. 254, 270 (1970), which this Court should settle to correct the instant injustice and further injustice to the public.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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